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## POPULAR CONTROL OF SENATORIAL ELECTIONS.

WHEN Thomas Paine declared that a constitution did not exist as long as it could not be carried in the pocket, he but expressed the faith of his countrymen in the high efficacy of that new political device, the written constitution, which American example was to commend to the acceptance of other countries. The result of the Federal Convention's long months of labor took form in what has come to be regarded as the typical rigid constitution. It may well be that to its framers the process of amendment, in contrast with that provided by the Articles of Confederation, seemed dangerously relaxed. Nevertheless, to-day, with all the amendments which four generations have added, it may be read through aloud, so Mr. Bryce tells us, in twenty-three minutes. Yet this terse and rigid constitution has served as the frame of government for a great federal state throughout a century of marvelously varied development. He who would understand this anomaly must give diligent heed to the custom, not less than to the law, of the constitution, realizing the vital truth of the dictum of Sir James Mackintosh: "Constitutions grow; they are not made." No written law, to however great authority it may lay claim, can long withstand the determined will of the people, demanding change. "What time cannot blot out, it interprets." And the more rigid the constitution, so much the more inevitable and the more radical becomes this subversive interpretation, when once it comes to be believed that time has made ancient good not only uncouth but dangerous to the public weal.

Thus, the constitution requires that the senators from the several states be elected "by the legislatures thereof." Gradually, however, the feeling has become widespread that many of the men who in recent years have found their way to the Senate are little disposed to hold themselves responsible to the people or to heed the broader interests of the country. Rightly or wrongly, this imperfect sense of responsibility shown by the senators is being attributed in increasing measure to the process and organ of their election; and the same distrust of state legislatures which has led to the stripping away of many of their powers, through amendments to state constitutions and other forms of direct legislation, now gives rise to the demand that the choice of senators shall no longer be left to the caprice of these legislatures, but that it shall either be taken away from them entirely, or at any rate be subjected to effective popular control. The first of these demands is the basis of the propaganda, first put forward eighty years ago and in the last decade rapidly growing in volume and insistence, that the constitution be so amended as to provide for the election of senators by the direct vote of the people. In many ways this seems both the most direct and the most natural method of securing senatorial responsibility. Yet the obstacles in the way of its attainment have hitherto proved insuperable. They are raised not only by those who have no faith that popular election would prove an effective remedy, but also by those who regard such a change of the constitution as either impossible or inexpedient. Nevertheless, during the past decade, the agitation in favor of this amendment has acquired such force and definiteness that to many its adoption seems close at hand.

But meantime much the same goal has been sought by a very different route. In true English fashion, custom and precedent have here been at work changing the spirit and import of the law while its letter remains ever the same. Sometimes by mere tacit understanding, sometimes by the insistence of political parties, sometimes by the direct and positive interposition of state law, this movement has gone forward with ever-increasing force, until a point has been reached where it is well to take a survey of what has already been done and attempt a forecast

of what may yet be accomplished in the way of securing popular control over senatorial elections without recourse to amendment of the federal constitution.

Notwithstanding our rigid constitution's decree that the senators from the several states shall be elected by "the legislatures thereof," this act of the legislatures may be deprived of nearly all of its vitality. The election of president offers an illustration of the filching of actual power away from the electors in whom it is vested by law. When James Russell Lowell, a Republican elector for Massachusetts in 1876, was urged to exercise his independence and vote for Tilden, he declined, saying that "whatever the first intent of the constitution was, usage had made the presidential electors strictly the instruments of the party which chose them."[1] The constitution remains unchanged, yet presidential electors recognize that they have been stripped of all discretion. It appears that under certain conditions the election of senators by state legislatures has been and can be made an equally perfunctory affair.

The simplest way in which popular suggestion or pressure may be brought to bear upon the legislature is through the endorsement or nomination of some candidate for senator by the state convention of the party. Thus, in April, 1858, the Democratic convention of the state of Illinois gave its endorsement to the position which Douglas had taken on the Kansas question. Everyone recognized this as equivalent to naming him as the party's candidate for reëlection to the Senate by the legislature which was to meet a few months later. The Republicans promptly put forward Lincoln as his opponent, and at their convention in June passed the following resolution: "Hon. Abraham Lincoln is our first and only choice for United States senator to fill the vacancy about to be created by the expiration of Mr. Douglas' term of office." In point of law the great debate which followed was but an incident in the election of a legislature with which alone rested the power of electing a senator, but the whole country knew who was to be senator as soon as the votes for the members of the legislature had been

[1] W. D. Howells, in *Scribner's Magazine*, vol. 28., p. 373.

counted. The issue between these two candidates had been so dominant, the people's will so directly expressed, that doubt or hesitation was out of the question. Four years later, Charles Sumner had lost favor with certain elements of the Republican party in Massachusetts, on the eve of the expiration of his second term. His adherents, therefore, were determined that the party should be pledged to his support, and in the state convention they secured the adoption, not without opposition but with much enthusiasm, of a complimentary resolution nominating him for reëlection. In the legislature his election followed without opposition and as a matter of couase.

Yet this method does not always yield assured and satisfactory results. In both cases already cited only two great parties were pitted against each other and the issue between them was clearly drawn. But in the more tangled political conflicts of recent years, where parties are split into factions and where issues are purposely blurred, the skirmish in the convention by no means decides the campaign. When the legislature meets, the chances are that no one of the convention-endorsed candidates will secure a clear majority on the first ballot, and in the attempts to form coalitions the restraints of the convention's instructions soon get relaxed. Even if the man of the convention's choice is finally elected, it is only after a bitter contest, in which charges of bad faith and corruption are freely exchanged. Precisely such an experience, for example, was had in the Minnesota election of 1893, in the hard-fought election of the late Senator Cushman K. Davis, and public dissatisfaction found expression in such editorial comment as this:

> When the legislators refuse to vote for a candidate who has been indorsed by the people, by the party convention and the united party action, and for such refusal are able to offer not a syllable of objection to the candidate's moral and intellectual fitness, it is time such men were not given power to defeat the people's will.[1]

Except in states where one united party has an overwhelming majority, and until the choice of senator comes to be the

[1] *Minneapolis Tribune*, January 21, 1893.

dominant issue in the election of members of the legislature, they will therefore continue, whether for good or ill, to exercise not a little independence of convention restraints, to the occasional confounding of the people's best hopes and most confident expectations. Moreover, it must not fail to be observed that, while the designation or endorsement of a senatorial candidate may under certain conditions amount to his virtual election, it involves not one whit of genuine popular control of senatorial elections, unless the party machinery in that state is so contrived and so operated as to ensure a trustworthy expression of the people's choice. Otherwise it amounts merely to the choice of senator by a servile convention at the dictation of the ring or of the boss, and the last state of that election is worse than the first.

In recent years no other department of political legislation of the several states has been subject to such restless change as that relating to the nomination of candidates for public office. Repeated and painful experience of the abuses of party machinery, and in particular of the delegate nominating convention, has led to a determined movement for the securing of the direct primary. Throughout the country the dominant tendency has become to accord to the people, in form at least, the right and the opportunity to share in the choice of men for the public service. Although the senatorship lies outside the state system, direct recourse to the people in the primaries for the selection of senatorial candidates finds a precedent as early as 1890. Again, as in the endorsement of senatorial candidates by party conventions, it was Illinois that set the example. Says Senator Palmer:

> Election of senators by a popular vote, which by common consent should control the members of the legislature, was not novel to the people of Illinois, for they were familiar with the great contest of 1858.
>
> In 1890 the state committee of the Democratic party, in connection with the call of the state convention, put two propositions before the voters: (1) the propriety of a nomination by the proposed state convention of a candidate for senator, to be voted for by the people at the next election, as directly as possible under the provisions of the constitution; and (2) the selection of a candidate for senator, if it should be determined that a candidate be nominated.

Result: Primary conventions held in more than 90 out of the 102 counties of the state, including the county of Cook, which now contains nearly if not fully one-fourth of its population, determined to nominate a candidate, and indicated their preference for the person to be presented to the people. The state convention expressly approved the plan of direct election and indorsed the candidate. He accepted the platform and toured the state. On the issues 101 (out of 202) members were elected to the legislature by an aggregate plurality of 30,000 and over. These one hundred and one members of the legislature, regarding themselves as electors chosen to register the will of the people, between the 21st day of January, 1901, and the 11th of March, voted for the candidate nominated in 153 ballots, and on the 154th ballot they were joined by two members of the House of Representatives who were favorable to the election of senators by the direct vote of the people of the several states, and on that ballot a senator was elected.[1]

It was by virtue of the will of the people, thus directly expressed in his own nomination and election, that Senator Palmer felt himself called of the people to stand forth as their champion in the Senate in the fight for the amendment of the constitution. Yet this very experience shows how far from effective, in such a state as Illinois, is the popular control which can be exercised over senatorial elections by direct nominations endorsed by party conventions and followed by the election of legislators upon this as the main issue; for, although Palmer's candidacy was backed by a "plurality of over 30,000," the legislature was in deadlock for nearly seven weeks before his election was effected, and even then it was brought about only by the votes of two men who, as his opponents asserted, had been pledged to vote against him.[2]

It is in the states where a single party has so established its dominance as virtually to take over to itself the functions of the state that the direct primary has found most ready adoption. So congenial has this new institution proved throughout the South that it "is now no unusual thing for the number of votes

[1] Congressional Record, vol. 23, p. 1267.

[2] Compare Senator Chandler's account of this election, *Congressional Record*, vol. 23, p. 3197, April 12, 1892.

cast in a general election to fall to a very small proportion, sometimes as low as from ten to twenty-five per cent of the vote cast in the nominating primary for the same candidates."[1] As the people of the southern states have accustomed themselves to "take part in the choice of their [state] officials almost entirely by the indirect method of sharing in the selection of the candidates of one party," it has been almost inevitable that the same procedure should be extended to the choice of senators; and, without any explicit provision of law, in most of the states senatorial contests have come to be finally decided in the primaries. How closely this method may approximate to a popular election of senators is clearly shown by Governor Jeff. Davis, of Arkansas:

> The last state convention adopted a resolution that the candidate for the United States Senate receiving the highest number of votes in the primaries should be declared the choice of the Democratic party for the United States Senate by the state convention, just as they declare the nominees of the party for state offices, and of course the legislature has no duty depending upon them but to cast their vote for the person declared the successful candidate by the state convention. This is absolutely equivalent to election by the people. You see this can happen in this state because the nominees of the Democratic party are considered as elected, as our legislature consists of 135 members and only two are Republicans.[2]

To show the extent to which in many states the legislature's function in the election of senators has become atrophied, it is only necessary to note the growing frequency of unanimous elections. In 1900, Senator Morgan received a unanimous election from the Alabama legislature, and in Louisiana two senators were thus elected. In 1901, Senator Tillman was thus returned to the Senate from South Carolina; in 1903, the vote was unanimous for Pettus in Alabama, and for Latimer in South Carolina. In 1904, Foster, in Louisiana, and both Money and McLaurin in Mississippi were unanimously elected. Upon the surface these election returns might seem to indicate such pre-

[1] Francis G. Caffey, POLITICAL SCIENCE QUARTERLY, vol. xx, p. 61, March, 1905.

[2] Letter of Governor Davis to the writer, August 29, 1904.

ëminent qualifications in the senators chosen as totally to eclipse all other candidates. As a matter of fact, however, many of these unanimous elections have been preceded by the most acrimonious of campaigns. The unanimity of the election in the legislature merely signifies that, inasmuch as all the questions had been settled in the primary, "the election itself is a mere legal formality, to which no more attention is given than is necessary to record the result of the primary."[1] Throughout the South this method of nomination has been introduced as a mere matter of party rules, binding upon the dominant party and hence having the effect of genuine laws. In Mississippi, on the other hand, the act of 1903[2] invokes the strong arm of the law to regulate the primary and to make it as much a function of the state as is the election itself. This law abolishes all nominating conventions of whatever grade and makes specific provision for the nomination of all elective officers, including United States senators, by direct primaries.

In other sections of the country, too, the direct primary is making rapid progress. The recent laws in Minnesota, Michigan, Indiana and Massachusetts[3] provide machinery which may readily be adapted to the nomination of senators; while the

[1] F. G. Caffey, *loc. cit.* The procedure in one of these elections may be illustrated as follows: In May, 1897, the death of Joseph H. Earle caused a vacancy in South Carolina's representation in the Senate. Primaries were ordered for August 31 to ascertain the choice of the people. The Democratic state committee marked out a plan of campaign for two months, and the candidates made speeches in every county. They were J. L. McLaurin, Ex-Governor Evans, Ex-Senator Irby, S. G. Mayfield and J. T. Duncan, but the last two withdrew after a short time. The canvass was most exciting and the speeches were sometimes bitterly personal. McLaurin was assailed as a protectionist, having voted in favor of protectionist amendments in the Dingley tariff bill. The vote stood: McLaurin, 29,326; Evans, 11,375; Irby, 5,159. See Appleton's Annual Cyclopædia, 1897, p. 734. In McLaurin's sketch in the Congressional Directory the purely perfunctory nature of the legislature's part in the election is suggested: "He was nominated at a Democratic primary, receiving a majority in forty-one of the forty-five counties of the state; the legislature ratified the action of the primary by electing him senator."

[2] By some writers this is considered the ideal direct nomination law. See Edward Insley, *Arena*, January, 1903, pp. 71–75.

[3] In so conservative a state as Massachusetts the legislature, during the session of 1905, considered a petition for legislation to provide for the nomination of candidates for senator by the direct vote of the people.

new laws of Wisconsin and Illinois[1] proceed directly to that goal.

In western states the tendency in recent years is not to rest content with the designation of senatorial candidates by the state convention, nor even with the nomination of candidates by the primaries, but rather to insist upon going through all the forms of a popular election, the whole process being under the supervision not of party leaders but of state officials. Thus, as early as 1875, the following proposition was submitted by itself to the voters of Nebraska, and was by them adopted as a part of the new constitution of that year:

The legislature may provide that, at a general election immediately preceding the expiration of the term of a United States senator from this state, the electors may by ballot express their preference for some person for the office of United States senator. The votes cast for such candidates shall be canvassed and returned in the same manner as for state officers.[2]

This thoroughly democratic provision for a preliminary popular

[1] Neither of these laws has as yet received a trial. The significant sections of the most recent primary election law—the Illinois act of May 18, 1905—are as follows: "Section 22.....Any candidate for the nomination for United States senator shall have his name printed on the primary ballot of his political party in each county by filing in the office of the secretary of state not less than thirty (30) days before the primary election a written request substantially in form as the foregoing request provided for by candidates for governor. The vote upon such candidates for United States senator shall be had for the sole purpose of ascertaining the sentiment of the voters in the respective parties. Every candidate for governor and for United States senator shall further file with the secretary of state a petition signed by not fewer than 5000 legal voters, members of the party in which he is a candidate for nomination. Not less than twenty-five (25) days before the primary election the secretary of state shall certify to the county clerk of each county the names of all candidates for governor and United States senator, together with their political affiliations, as specified in the written requests on file in his office. Each candidate for governor and for United States senator of the respective parties shall pay to the secretary of state a filing fee of one hundred (100) dollars.

Section 49.....The secretary of state shall cause to be delivered to the secretary of state convention of the respective parties next following such primary election..... the total vote by counties for each candidate for governor of the respective parties. It shall be the duty of the secretaries respectively of the county, senatorial, congressional and state conventions, to read to the convention before any candidate is put in nomination, the total vote, by counties, received by each candidate of the respective party voted for upon the primary ballot provided for in this act.

[2] Nebraska constitution, article 16, section 312.

election was for a long time absolutely unique; yet the people of Nebraska have seemed to take little interest in it. In twenty-five years and more, since it became a part of the constitution, they have made use of it but once, and then with results that are significant. In 1886 General Van Wyck made an active canvass of the state in his own behalf as an anti-monopolist. Neither the Republican nor the Democratic party put forward a senatorial candidate in the popular election in November, at which, although 138,209 votes were cast for governor, only 50,448 voters expressed a preference for senator; of these more than 91 per cent voted for Van Wyck. When the legislature met, he led on the first two ballots, receiving 40 votes out of 100; but he failed to secure the election, a result which he attributed to the interference of railroad officials and monopolists. As to the present attitude of the people toward this election, the governor of Nebraska writes:

> In 1898 this matter was included in the proclamation, but there was a very feeble response. From most counties no returns were made. In the fifth and sixth congressional districts combined (which would normally contain not less than 75,000 voters) only 626 votes were cast on this preference. It appears to be generally popular throughout the state, but there is a general apathy when it comes to placing the matter on the ballot.[1]

In other states more recent laws have been framed upon this subject with greater and greater particularity. Their titles and preambles leave no doubt as to their motive. Thus, in 1899, Nevada enacted a law entitled: "An act to secure the election of United States senators in accordance with the will of the people and the choice of the electors of the state, and to obtain an expression of such choice and to prevent fraud and official dereliction of duty in connection with such elections." This law provides that candidates for the Senate may be nominated in the same manner as the candidates for the state offices; the names of the senatorial candidates having been given a place upon the ballot, the votes upon them are certified in the same manner as upon the other candidates;

[1] Letter of Governor John H. Mickey to the writer, Aug. 31, 1904.

and the secretary of state is required to transmit the results to the legislature, when it meets for the formal election. Accordingly, in Nevada, a party convention nominates on the same day—as was done August 10, 1904—candidates for the United States Senate, for representative in Congress and for judge of the state supreme court. The subsequent election process in the case of all these candidates is precisely the same, except that the election of the judge and of the member of Congress is complete when the returns of the popular vote are duly certified, while in the case of the senator the only election of which federal law takes any account does not begin until months later, when the legislature takes up that task. As regards the election of a senator, accordingly, all these elaborate operations are but a complicated method of bringing moral pressure to bear upon men who, in spite of it all, have a perfect legal right to vote for the man of their party allegiance or of their personal liking.

By the Oregon law of 1901, as in Nevada, the whole process is assimilated to that employed in the election of state officers; in one respect, however, the people's choice for senator is more forcibly obtruded upon the legislature. Duplicate copies of the returns are to be sent to the House and to the Senate, and their respective presiding officers are required to

> lay the same before the separate houses when assembled to elect a senator in Congress as now required by the laws of Congress, and it shall be the duty of each house to count the votes and announce the candidate for senator having the highest number, and thereupon the houses shall proceed to the election of a senator, as required by the act of Congress and the constitution of this state.

The plain intent of this law was to subject senatorial elections to a popular control more direct and more imperative than had ever before been attempted by any state. It would hardly be possible to say to the legislature more plainly: "This is the way. Walk ye in it." What has been the result? At the assembling of the next legislature, Governor Geer put before them the situation as follows:

> In obedience to a general demand from the people and the press of the

state, the last legislature passed a law providing for a direct vote on candidates for United States senator. After a careful revision during its passage this law was enacted by a vote that was practically unanimous, and in exact accord with its provisions the popular vote was held last June . . . In many states of the Union the result of this first attempt at the popular vote for United States senators is watched with much interest, and its prompt observance and ratification will not only encourage its adoption in other states, but will prove the sincerity of our protestations in favor of popular election of senators and render impossible a repetition of former experiences in Oregon, to prevent which this law was formulated, supported and adopted.

This experiment certainly deserved the serious attention of the other states, but the note of strenuousness in the governor's words in reference to it may possibly be related to the fact that he himself was the candidate who had carried the popular election by a large majority. On the very day when the legislature had been thus exhorted, January 20, 1902, there were transmitted to the separate houses of the legislature with all due formality copies of an abstract of votes cast at the general election for senator held during the previous June. In the House the speaker appointed a committee of three to assist in canvassing the vote, and the result was announced as follows: For T. T. Geer, 44,697; for C. E. S. Wood, 32,627. The record proceeds: "The election of United States senator being next in order, Mr. Denny placed in nomination Hon. T. T. Geer, Mr. Phelps placed in nomination Hon. C. W. Fulton, Mr. Galloway placed in nomination Hon. C. E. S. Wood. The roll was called with the following result: Geer, 12; Fulton, 19; Wood, 12"—and scattering votes for eleven other candidates. Thus the man who had secured a majority of 37 per cent in the popular vote received only a small minority on this first ballot in the House. The election was thrown into the joint assembly, and there the deadlock, which seems to have become the normal thing in the legislatures of Oregon, forthwith began. Not until it had lasted more than five weeks did it become possible, at a night session, on the forty-second joint ballot, to elect a senator. The candidate elected was a man for whom not a single vote had been cast in this much vaunted popular election, which

had been instituted for the express purpose of affording the people "an opportunity to instruct their senators and representatives in the legislative assembly as to the election of a senator in Congress from Oregon.[1]

But schemes for controlling the legislature's choice have gone even further. In Colorado there was recently introduced a bill of a much more radical nature. It provided that at the general election next preceding the time for electing a United States senator, each political party might place upon the ballot the names of five or less candidates for the Senate, and bound the members of the legislature under penalty of expulsion to vote for the candidates of their respective parties receiving the greatest number of popular votes.[2] This bill did not become a law. Had it done so, its constitutionality might possibly have been successfully contested. But its introduction is highly significant of the growing determination on the part of the people of the western states that in electing senators their state legislators shall presume to exercise no independence of choice, but shall merely register the people's expressed will. The fundamental idea in this novel Colorado proposal, it is interesting to note, has received the approval of distinguished authority: in the debate over the law of 1866 both Senator Williams and Senator Sumner insisted that, although the constitution directed that senators should be chosen by the legislatures, their constituents had a right to instruct the members as to their votes for senator and had a right to be obeyed.

It may prove possible for the states to give the people free power of nomination and yet leave to the legislatures a power of election which has not been reduced to a mere form. Along this line the suggestion has recently been made that the names of all candidates who receive a certain number of votes (say 3000 or 5000) in the direct primaries be printed upon the official ballot at the general state election; and that the result of

[1] Preamble of the law of February 26, 1901.

[2] This would do little more than incorporate into law a practice which already has the force of law in some of the states. Thus, in South Carolina, candidates for the legislature are placed under oath to abide by the results of the primary. Jesse Macy, Party Organization and Machinery, p. 195.

this election, as represented by the list of those candidates (say five or ten) who have received the highest number of votes, be a popular instruction to the legislature to choose from them a senator by the Australian ballot, each member to vote on the first ballot for three on the list, and on the second for one (or two, as the case may be) out of the three highest, as determined by the first ballot. Among the benefits to be expected from such an elective process it is predicted that choice would no longer be a choice of two evils, and that worthy candidates would "tend to multiply, since they could allow their names to be used without loss of self-respect." [1] This scheme has been criticised as "academic," yet it has much to commend it for practical experiment. The constitutionality of limiting the legislature's range of choice to the list of candidates sent up by the people may be questioned; but even if such a limitation were not rigidly enforced the list of nominees with such backing could not fail to have a large measure of influence.

The object of this study has not been to set forth isolated experiments in constitutional law and custom, but to trace the progress of a movement which during the past thirty years has taken on different forms, has employed different means and methods, but has ever kept the same spirit and aim—a determination that the Senate of the United States shall be made responsible to the people.

The route first attempted was by way of an amendment to the constitution providing for the election of senators by the direct vote of the people. Only under urgent prompting from outside did Congress accord serious attention to this project; for years it received little more than perfunctory lip-service; yet so insistent became the demand that five times, and by ever-increasing majorities, the House of Representatives has passed a resolution proposing such an amendment. But progress toward the goal by this route has always been blocked upon reaching the frozen sea of the Senate's stolid resistance. In despair of success upon this line, recourse has been had to the

[1] See P. Garrison, "The Reform of the Senate," *Atlantic Monthly*, vol. 68, pp. 227-234, August, 1891.

optional but hitherto untried method of proposing amendments: state legislatures have been calling upon Congress to summon a convention for the express purpose of initiating this amendment. In one form or another the legislatures of thirty-one states —more than the full two-thirds prescribed by the constitution— have communicated to Congress their formal approval of the proposed change in the constitution: indeed, if the votes in the House be taken as a fair representation of the will of the people in their constituencies, only two states in the Union have failed to give their endorsement. Along this line, then, the movement has reached a point where it needs but the putting of these requests into a common form and the marshalling of this scattering fire of resolutions into one concerted volley of demand, to constitute a mandate which the constitution gives Congress no warrant but to heed. That the House would offer no obstruction every precedent makes clear. Would the Senate still demur, and thus invite disaster upon itself?

Meantime a vast deal of ingenuity has been devoted to attempts to reach popular control of senatorial elections by some other route than the amending of the constitution. While the form of election by the legislature is retained, its spirit has been radically changed. In no state in the Union to-day do members of the legislature proceed to the election of a senator with that enlightened independence, that freedom of individual discretion in the choice, from which the Fathers anticipated such beneficent results. Everywhere the legislators approach the task under the domination of party, and in every state where one well-disciplined party is in power the result of the election is a certainty even before the legislature convenes. Not only has party spirit claimed this election for its own, but the party's choice for senator is often made before the members of the legislature are elected and is obtruded upon that body by the state convention. Already in about a third of the states, either under party rules or in accordance with the explicit provisions of state law, direct primaries name the candidates, and wherever a strong party is supreme this nomination is tantamount to an election. In four states provision is made for a popular "election" carried out under the supervision of officials not of the

party but of the state, an election as complete in all its details and formalities as is that of the governor, yet as void of legal power to bind the legislature in the real election of a senator as would be the resolutions adopted by a boys' debating society.

Everywhere the movement for the direct primary is gaining ground. How will this advance affect the movement for an amendment authorizing popular election of senators? Both are outgrowths of the same democratic spirit. Some enthusiasts for the direct primary claim that the adoption and intelligent use of that device will restore to the legislatures their pristine purity and independence and fit them to perform the task of selection which the Fathers devolved upon them. But this optimistic forecast neglects two of the plainest lessons of experience. In the first place, the betterment of the legislatures through the nomination of their members by direct primaries does nothing to remove the perverting and corrupting influences exerted upon the legislatures by the retention of this incongruous electoral function. Of all the causes which have tended to degrade our lawmaking bodies hardly any other has exerted so malign a potency. To these bad influences the direct primary aims merely to subject a higher grade of legislators, possessed, it is assumed, of greater powers of resistance. In the second place, the Oregon fiasco of 1903 was hardly needed to afford convincing proof that the endorsement of senatorial candidates by state conventions, their nomination by direct primaries, even their "election" by an overwhelming majority of the vote of the people, may count absolutely for naught in influencing the real election at the hands of a legislature ruled by party bosses or rent by factions which this very election has brought into being. In the very states where popular control of senatorial elections is most needed, the best-laid schemes for its realization have proved futile.

What then is to be the outcome? That depends not a little upon the temper and action of the Senate itself. If senators have foresight enough to discern the cloud while it is yet but the size of a man's hand, the gathering tempest of discontent may be averted. For, in comparison with a rule-ridden House that has ceased to be a deliberative body, a Senate that gave

evidence of feeling itself responsible to public opinion and of striving to discover and serve the country's broader interests might so win the people's confidence that agitation for change in its mode of election would lose all its force. But is legislative election under present conditions calculated to yield a Senate capable of such self-regeneration? If, on the other hand, the Senate continues for a few years more arrogantly to refuse the people an opportunity to pass upon the mode by which its members shall be elected; if, meantime, relying upon the impregnable defences built about their office by legislative election, senators persist in neglecting or perverting measures of the utmost public concern, while not a few of them are devoting their best energies to the protection of private interests; if state legislatures, heedless of the earnest and manifold efforts made by the people to bring them to a sense of their high responsibility to the state in the selection of senators, persist in using their legal freedom of choice not for the selection of the best men but of men whose presence in the Senate is a disgrace to the state and a menace to popular government—then the new century will still be young when the people, tired of all this treachery on the part of their representatives, will cast aside this long established mode of election. Then, for better, for worse, democracy will take the election of senators into its own eager and strong but unskilled hands.

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